


**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2016 JAN 28 PM 12:26

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**ALICE H. ALLEN, et al.,**

**Plaintiffs,**

**v.**

**DAIRY FARMERS OF AMERICA, INC., and  
DAIRY MARKETING SERVICES, LLC,**

**Defendants.**

**Civil Action No. 5:09-CV-00230-cr**

**OPPOSING CLASS REPRESENTATIVES' MOTION FOR LEAVE TO FILE TO  
CORRECT ERROR OF FACT IN SETTLEMENT FILING 712-1**

In respect and recognition of the Court's Orders<sup>1</sup> & <sup>2</sup> we humbly request the leave to file to correct error of fact with regard to misrepresentation in Document 712-1, as it relates to our opposition of the proposed settlement.

<sup>1</sup> August 11, 2015 (Doc.682, pg. 8, footnote 9)

<sup>2</sup> September 14, 2015 (Doc.695, pg. 8)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

<u>ALICE H. ALLEN, et al.,</u>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 5:09-CV-00230-cr</b>
	)	
<b>DAIRY FARMERS OF AMERICA, INC., and</b>	)	
<b>DAIRY MARKETING SERVICES, LLC,</b>	)	
	)	
<u><b>Defendants.</b></u>	)	

**OPPOSING CLASS REPRESENTATIVES' MOTION AND MEMORANDUM TO  
CORRECT ERROR OF FACT IN SETTLEMENT FILING 712-1**

We are hereby notifying this Court that Subclass Counsel have chosen to materially misrepresent the perspectives of Opposing Subclass Representatives<sup>1</sup> in Document 712-1 filed January 15, 2016.<sup>2</sup>

We have well documented our vigorous efforts to facilitate the crafting of a meaningful settlement and are prepared to present our documentation. We never gave up on settlement, and only on December 20, did Mr. Haar bring up consideration of the alternative to settlement in response to Counsel's repeated false assertions on the December 17<sup>th</sup>, conference call that, "there would be **no** injunctive relief if we won at trial. The best we could hope for is a little more money..."<sup>3</sup>

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<sup>1</sup> Violation of Vermont Rules of Professional Conduct 3.3 (a)(1)

<sup>2</sup> "In short, the Opposing Representatives have indicated their desire to obtain additional terms by going to trial-"

<sup>3</sup> Violation of Vermont Rules of Professional Conduct 8.4 (c) and (d)

The four and a half hour call of Monday, December 21, was at our request. The concerns that Mr. Garret Sitts and Mr. Haar had after reviewing the proposed settlement took up the bulk of that call.

It had been explained to us that the advantage of settlement over trial is that we could achieve injunctive relief outside the scope of the Revised Complaint. In turn, we explained this to fellow class members and assured them that we would represent their objectives throughout the settlement process, hoping to meet one or two. We have documentation of this clearly communicated to Subclass Counsel. We were surprised to read Counsel's misrepresentative summary of "asserted reasons" for us opposing the proposed settlement.

We are opposed to this version of the proposed settlement because, "The violations set forth above and the effects thereof are continuing and will continue unless injunctive relief is granted."<sup>4</sup> The relief provided by this settlement is illusory in nature. There are some items that at first glance appear to have the potential to correct some of the alleged abuses, but a closer examination reveals the non-binding, "smoke and mirrors" reality. We are faced with a settlement with no meaningful injunctive relief either for subject matter in the Revised Complaint or issues related outside of that scope, and financial relief that is functionally irrelevant to the average North East dairy farmer.

There are both serious procedural and substantive issues with the proposed settlement beyond those mentioned herein.

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<sup>4</sup>Revised Complaint (Doc. 117, pg.95, paragraph 286)

Respectfully submitted,

/s/RALPH SITTS

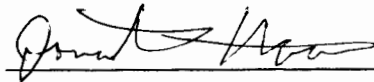
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**CERTIFICATE OF SERVICE**

I, Jonathan Haar, hereby certify that on January 27, 2016, I served a copy of this motion to counsel of record by certified mail.

  
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Jonathan Haar